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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional)
First Named Inventor: <u>Michelle Grandy</u> Art Unit: <u>3632</u> Application Number: <u>10/792,107</u> Examiner: <u>Tan Le</u> Filed: <u>March 3, 2004</u>		
Title: <div style="border: 1px solid black; padding: 5px; width: 100%;">Decorative Hanging Wastebasket</div>		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
<p>NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION. NOTE: A grantable petition requires the following items: (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay.</p> <p>1. Petition fee</p> <p><input checked="" type="checkbox"/> Small entity – fee \$ <u>270</u> (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee</p> <p>A The reply and/or fee to the above-noted Office action in the form of <u>Section of appeal brief found defective</u> (identify the type of reply):</p> <p><input type="checkbox"/> has been filed previously on _____ .</p> <p><input checked="" type="checkbox"/> is enclosed herewith.</p> <p>B The issue fee of \$ _____</p> <p><input type="checkbox"/> has been filed previously on _____ .</p> <p><input type="checkbox"/> is enclosed herewith.</p>		

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(e) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

/Charlena Thorpe/

05/30/2011

Signature

Date

Charlena Thorpe

48,035

Typed or printed name

Registration Number, if applicable

P.O. Box 1601

678-644-9922

Suwanee, GA 30024

Telephone Number

Address

Enclosure Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unavoidable delay**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

/Charlena L. Thorpe/ _____ Charlena L. Thorpe _____ Typed or printed name	05/30/2011 _____ 48,035 _____ Registration Number, if applicable
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(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

This application has a long history and has been diligently prosecuted including a first appeal and a second appeal, which is the subject of this petition.

On 12/17/2007, Applicant properly filed a first change of power of attorney with new correspondence address. The first power of attorney/correspondence address was apparently acknowledged (although no notice indicating acceptance was issued) since subsequent office actions were delivered to the new correspondence address indicated in the 12/17/2007 power of attorney/correspondence address change form.

On 10/13/2009, in connection with a Notice of Appeal and Pre-Appeal Brief Request for Review, Applicant properly filed a second change of power of attorney with new correspondence address. The second power of attorney/correspondence address was apparently acknowledged (although no notice indicating acceptance was issued) since the Notice of Panel Decision from Pre-Appeal Brief Review was delivered to the second correspondence address indicated in the 10/13/2009 power of attorney/correspondence address change form.

On 12/15/2009, Applicant submitted an Appeal Brief. On 1/11/2010, unbeknownst to Applicant, a Notice of Defective Appeal Brief ("Notice") was issued. Applicant never received the Notice. In the Notice, the Examiner indicated that "The summary of claimed subject should not list withdrawn, or canceled claims in this section. (claim 11 is withdrawn)".

Based on the USPTO PAIR records, it is not clear where this Notice of Defective Appeal Brief was delivered. In the USPTO records, the front cover page, indicating where the notice was delivered, is missing. Importantly, on 6/4/2010, almost five months after the Notice of Defective Appeal Brief was issued, the Examiner issued three separate Notices Regarding Change of Power of Attorney which addressed the 10/13/2009 power of attorney/correspondence address change form and 12/15/2009 power of attorney/correspondence address change form that were properly submitted. An examination of these notices indicates that the Notice of Defective Appeal Brief was most likely mailed to one of the old correspondence addresses although applicant properly and timely submitted a notification of a change of correspondence address prior to the Notice of Defective Appeal Brief.

Thus, it appears from the USPTO records that there was some confusion on the Examiner's part regarding the correct correspondence address to send the 1/11/2010 Notice of Defective Appeal Brief.

Further, Applicant's counsel had in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance and counsel's employees were sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employees represented the exercise of due care. Thus, if Applicant counsel received the Notice of Defective Appeal Brief, it was unavoidable delay in not responding.

However, it appears based on the Examiner's delayed acknowledgement of the 0/13/2009 power of attorney/correspondence address change form and 12/15/2009 power of attorney/correspondence address change form, the Examiner likely mailed the Notice of Defective Appeal Brief to the wrong/old correspondence address.

When applicant received the notice of abandonment, since appeared that the Examiner mailed the Notice of Defective Appeal Brief to the wrong correspondence address, Applicant's counsel called the Examiner's supervisor. The supervisor told Applicant's attorney that the case had been reassigned and gave the Applicant the number to another examiner (Examiner #2). Counsel called Examiner #2 and left a message. Examiner #2 called counsel back and informed counsel that counsel was given the wrong number and gave counsel the number to Terrell McKinnon, 1-571-272-4797. Counsel was told to wait to file any petition to revive and perhaps a new office action could be sent resetting the time for reply. Counsel waited to hear back from Mr. McKinnon but never heard back and now files this petition.

(Please attach additional sheets if additional space is needed.)

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PATENT
Attorney Docket No. 053946/338424
Customer No. 91892

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Michelle GRANDY) Group Art Unit: 3632
)
Application No.: 10/792,107) Examiner: Tan Le
)
Filed: March 3, 2004)
)
For: DECORATIVE HANGING)
WASTEBASKET)

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

REPLY TO NOTICE OF DEFECTIVE APPEAL BRIEF

Dear Sir:

In reply to the Notice of Defective Appeal Brief dated January 11, 2010, Applicant herein submits below a revised section V of the Appeal Brief filed on December 15, 2009. This reply is believed to be fully responsive.

V. SUMMARY OF CLAIMED SUBJECT MATTER.

Applicant provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal with exemplary reference to the specification, and to the drawing, if any, by reference characters. Claims 1, 12, 27, and 29 are independent claims.

Claim 1 recites an apparatus (100) for securing and concealing a storage unit (130) comprising a holder (110, 210, 220, 230) for securing a storage unit (130) to a surface; and a cover (120) attached to the holder (110), wherein the cover (120) is sized

and positioned on the holder (110) to conceal in whole or in part the storage unit (130) from being viewed in a first direction. (See, e.g., Figs. 1-2, Specification at p. 4, ¶ 15 through 6, ¶ 21.)

Claim 11 recites an apparatus comprising a storage unit (130) having a first and a second mounting piece (not shown), wherein the first mounting piece connects to a surface; and a cover (120), wherein the second mounting piece connects to the cover (120). (See, e.g., Figs. 1, Specification at p. 7, ¶ 25.)

Claim 12 recites an apparatus comprising means for securing a storage unit to a surface (110 or 210-230 or 210, 220, 230' or 710-730); and means for concealing (120, 740) in whole or in part means for securing. (See, e.g., Figs. 1-8, Specification at p. 4, ¶ 16 through page 8, ¶ 26.). The "means for securing" element is a means plus function element and the structure described in the specification as corresponding to the claimed function are at least any of the following groups of elements: 110 or 210-230 or 210, 220, and 230', or 710-730. The "means for concealing" element is a means plus function element and the structure described in the specification as corresponding to the claimed function are at least elements 120 and/or 740.

Claim 27 recites an apparatus for providing a decorative hanging wastebasket (130), comprising a holder (110, 210, 220, 230) structured to be secured to a surface and structured to hold a container (130) into which matter can be deposited or removed and a cover (120) connected to the holder (110, 210, 220, 230) that is structured and positioned on the holder to conceal a container (130) held by the holder (110, 210, 220, 230) from being viewed in at least one direction. (See, e.g., Figs. 1-2, Specification at p. 4, ¶ 15 through 6, ¶ 21.)

Claim 29 recites an apparatus for providing a decorative hanging wastebasket (130), comprising a holder (110, 210, 220, 230) that includes a first section (210) structured to attach to a wall, a second section (220) structured to support a wastebasket above a floor adjacent to the wall, and a third section (230) structured to connect to a concealing cover; and a cover (120) connected to the third section (230) of the holder that includes at least one surface with dimensions equivalent to or greater than at least one surface of a wastebasket (130) supported by the holder (110, 210, 220, 230) and wherein the cover (120) is connected to the third section (230) of the holder in an orientation that hides the at least one surface of the wastebasket (130) from being seen from at least one direction. (See, e.g., Figs. 1-2, Specification at p. 4, ¶ 15 through 6, ¶ 21.)

Respectfully submitted,

/Charlena Thorpe/

Charlena L.Thorpe, Reg. No. 48,035

Dated: May 30, 2011

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